

Testimony in support of SB185 by Robert Filipovich 3 15 2011 927 8<sup>th</sup> Ave. Helena 59601 449 6039

I assume no one on this House Judiciary Committee would deliberately execute innocent people for crimes they did not commit. I also assume that none of you would use the death penalty if innocence or guilt was in any doubt. But I do not assume, therefore, that all of you would do what you must to prevent the wrongful execution of even one person because some here apparently believe that the state should have this ultimate, irreversible power because it claims perfect knowledge and perfect action.

There are only two ways to be absolutely certain that the state will never execute an innocent person. One was is to adopt SB185 and never again execute anyone. The only other way to be absolutely certain that Montana will never execute an innocent person is to prove that the state has been, is now, and forever shall be perfect.

Other states have convicted and executed innocent people. Is our state infallible? Or does it choose to run a risk and assume that the criminal justice system always works flawlessly? Just because the state has a law that legitimizes its power over the lives of its residents, this does not mean that the state is all-knowing, all-understanding, all-perfect in its irreversible decisions. Because execution if irreversible, execution requires omniscience.

During my twenty-five years of working in three of Montana's prisons, mostly as a teacher, I knew many murderers and others who are very dangerous. And last week I gave all you representatives a set of remarks by victim/survivors and lifers on aspects of the problems that SB185 would help solve. Please read their thoughtful perspectives on God's role in this matter, what a life sentence is like, what victim/survivors think of the justice system, and on restorative justice.

But these valuable perspectives are not why I oppose the death penalty. I oppose it first, because I do not want to participate in perpetuating a falsehood. Surely we agree that the state is not omniscient in its procedures, its actors, or its laws. Execution requires perfect judgment, which we do not have and cannot attain. It is false to implicitly claim such perfection.

Second, if the state is imperfect, should the state have the ultimate power to execute human beings? This power is too great for any man or any government; this responsibility does not belong to the state. This power, like other governmental powers, is not immune to corruption and wrongful use.

Consequently, if the state's criminal justice system is fallible, and if the state should therefore not have the power of death over its citizens, then surely its citizens should not be required to pay for these expensive, imperfect state actions.

If you agree that the state, like each of us, is fallible, that therefore the state must not have the power of death, and that the state should not be able to force taxpayers to support, by word and dollar, its false claim of omniscience, then you must end this most awesome power of the state.

March 15, 2011

*Dear Members of the House Judiciary Committee:*

*My name is Sandy Heaton, and I am a mental health therapist who began working at Montana State Prison in 1973 and worked there for 30 years retiring in 2003. When I first started working at the prison as a young woman in my 30's, I didn't have an opinion one way or the other about the death penalty. I can tell you I never thought I would be writing you today asking you to repeal the death penalty.*

*But, over the years I saw what happened to staff and others at the prison when executions take place. I have come to the conclusion that executions have a harmful affect on corrections and others who work in the prison system.*

*Initially, it was surprising to me at the effect it had on staff. As you might imagine, it takes a lot of planning and work ahead of time to have an execution go off without a hitch. As a result, staff starts to be affected days and weeks before the event and sometimes was still affected days and weeks afterwards.*

*Everyone who works in a prison is affected when an execution takes place. It is an enormously stressful job to participate in an execution and to work at a place where an execution takes place. I have seen staff quit, as an execution got close because they felt they couldn't work for an agency that killed people. Other staff called off sick or just weren't around on the day of the execution. Tension among staff was much higher as people picked sides, each trying to convince the other that their viewpoint was right. It has been my experience that it takes several days or weeks for everyone to settle down again.*

*The funny thing is that it is very difficult for staff to support each other in this incredibly hard situation. In order to protect the execution team, the identity of its members is kept secret. This is a very confusing and conflicting message to send to those who are asked to end the life of a human being. The law tells you it's your job to carry out this sentence but we will protect you in this horrible job by not letting your friends and colleagues know that you are one of the ones who did the job. This sets up a scenario where the ones who do the killing can't rely on their colleagues to help them process it afterwards.*

*Another part to the picture are the staff members who have gotten to know these offenders as people and now have to stand by as they are killed. The irony for people working in the field is that they begin to see offenders as people, granted people who have done heinous things, but people nonetheless. They converse and interact with them on a daily basis. It is actually part of their job to protect them from harm. Executions take a long time to happen so no matter what,*

*there are corrections officers in the jail who have a relationship with the person to be killed and they are affected.*

*I know that some of you may think that we need to have a death penalty to get rid of the prisoners who kill in jail. The only thing I can say to that is that I know how long it takes for an execution to happen. When someone is sentenced to death they are not executed for decades. So, the death penalty really fails to address that problem and as I have said, it creates so many more problems.*

*Thank you for your consideration of this very important issue. I urge you to support Senate Bill 185.*

*Sincerely,*

*Sandy Heaton*

March 14, 2011

Dear Members of the House Judiciary Committee,

My name is Dan Oberweiser, and I am a Licensed Addictions Counselor for the State of Montana. I have been a counselor since 1990, and my first 12 years were spent in service at Montana State Prison. It is my experience at MSP that compels me to write to you about your very tough position in determining to keep or abolish the Death Penalty in our state.

In my years at MSP, I experienced a horrible riot, assaults against staff and inmates, murders of inmates by inmates, and 2 executions. I was present at work the day of the execution of Duncan McKenzie. I was part of the crew that escorted the media personnel on a tour of the prison, including the execution trailer, and I was the person who responded to their questions.

When I left at 10:00 pm that evening, I stayed in Deer Lodge at a local restaurant/tavern to watch the news with around 40 others. As I sat quietly in my corner, the crowd was having a good time "partying". When the newscaster finally informed us that McKenzie was dead, the crowd cheered and drank their shots, compliments of the bartender. After a few minutes, they began to look at the TV again, but this time, there was no cheering. They looked around, and it seemed to me that the reality of what happened finally hit them. A man was dead. I remember even as I write this the sick feeling I had at that time.

This horrible feeling was shared by many of my co-workers the next day. Some of us have never forgotten this, especially those who were witnesses to the execution. This is something that people who support the death penalty never think about - what it is like for the people who work in the prison where the execution takes place. I just want you to know that there is more suffering than you realize.

In my profession as an addictions counselor, I know that under the influence of alcohol and or drugs, a person is capable of doing anything to anyone at any time given the right circumstances. This, to me, is where we need to focus our attention if we are to ever cut down on these serious crimes.

As an added note, I met the family of McKenzie's crime. Some of them were angry and wanted "satisfaction" for what he took from them. I saw them again after the execution. Some of them seemed angrier than before because McKenzie made no confession or apology to the family. There was no resolve of their anger, and there was no closure.

I ask you to seriously consider my request to abolish the Death Penalty and help Montana to become a leader in the fight to rid our country of the label so many countries have that we are a culture of death.

Thank you for your time and consideration given me in this very difficult decision.

Sincerely,

Dan Oberweiser, LAC

Senate Bill

185

House Judiciary Committee

State of Montana

Mr. Chairman, members of the committee my name is Richard Meeker, and I reside in Helena Montana

When I retired from the court system several years ago I gave no thoughts of ever again appearing before a legislative committee offering testimony on a proposed piece of legislation.

However, I appear before you now in support of the above listed piece of legislation. I have worked in the Youth Court System for 34 years. Thirty two for those years I worked in the State of Montana, serving for 25 years as Chief Probation Officer for the first judicial dist. Now I have no dog in this fight, by that I mean to say that I am not employed nor am I a member of any agency or organization that either supports or opposes this legislation. I am simply a former practitioner.

I am here today in support of Senate bill 236 and in doing so oppose the death penalty. I oppose the death penalty for the following reasons. It is often touted that the death penalty offers a deterrent to potential violent offenders from committing violent crimes. This assumption is simply wrong. During my tenure with the court system I dealt with a half of dozen murders as well as several violent crimes where in the victim almost died. I can assure you that at no time prior to the offense did the offender ever consider the consequences of his actions, let alone that he might face the death penalty. The death penalty does not deter the violent offender. Finally it is often assumed that the survivor/family members or friends of the victim can only gain closure to this most unfortunate life event through the death of the offender. Though we enjoy the finest legal system in the world the system continually re-victimizes the survivors from the initial investigation through the trial, and the long appeals process. The survivors are force to continue to relive the pain, anger and sadness of the original crime. They never rest.

Since it does not deter, it puts victims through years of revictimization it is an unwise policy. With no clear benefits, I have concluded that the death penalty is wrong, and is curial and unusual punishment not worthy of a civilized society. Lets help law enforcement by putting our resources to reduce violence and aid victims.

Dick Meeker

March 14, 2011

To: House Judiciary Committee

Since demands on your time are extraordinary, I will be brief and to the point. I am writing to encourage you to vote affirmatively on (SB 236) the bill to abolish the death penalty and replace it with life without parole.

S/B SB125 jg

Having spent over 50 years in forensic science as an investigator, researcher, consultant, and professor, even before it was recognized as a specialty area, I have extensive experience in evaluating its efficacy. I have taught sex and homicide crimes to attorneys, health care professionals, local law enforcement, and the F.B.I. I have served as an expert witness on forensic cases, and I helped pioneer the legal inclusion of bite mark evidence and the establishment of medical examiner systems.

My experience in working with all phases of forensic science provides me with a unique opportunity to inform you of its strengths and weaknesses. Much of the evidence is tainted by inadequate gathering and processing techniques and then used only when it can prove someone guilty, not when it shows innocence. Frequently, forensic evidence is overlooked by inappropriately trained personnel, denying the opportunity to both the State and the defense of accurately assessing the crime. Sadly, some forensic evidence offered is willingly distorted in an effort to gain a conviction. Bite mark analysis is an excellent example of cases of deliberate evidence distortion used to convict innocent defendants. In my experience, neither test in bite mark evidence practice (the Frye test and the Daubert test), guarantees accuracy.

Then there are cases where the forensic evidence present is falsified. The classic case in my experience was the presentation to the court of a forensic test sworn to as accurate by the forensic scientist. No such test existed. Unfortunately, when it comes to evaluating forensic evidence, neither the court nor the jury has any way of knowing the accuracy of the evidence. Often times the problem becomes obvious, such as crime scene blood containing a preservative, but when the deception is more subtle, it is not detectable by the jury.

Nothing in this world is perfect, and forensic evidence is getting better. But mistakes are made, either inadvertently or deliberately, and mistakes can and do lead to inappropriate convictions. All you need do to recognize its influence is to reflect on the number of cases that are reversed with DNA evidence and those that have been exposed as prosecutorial abuses.

It has always been my philosophy, based on my training and education, that our system is not designed to protect the innocent. To convict, sentence, and execute one innocent human being is intolerable. In this day of scientific enlightenment, coupled with financial exigency, I believe our best approach is to abolish the death penalty and replace it with life without parole.

Sincerely,

Ronald M. Gerugthy, DDS, PhD  
Pathologist, retired  
Great Falls, MT

See 22. Wilkinson, A.P. and Gerugthy, R.M., *Bite Mark Evidence: Its Admissibility is Hard to Swallow*, **Western State Law Review** 12(2):519-61, Spring 1985.